

Reliant Energy aka Etiwanda, LLC and Utility Workers of America, AFL-CIO. Cases 31-CA-25155 and 31-RC-8023

May 22, 2003

SUPPLEMENTAL ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The issue presented is whether the Board should allow the Respondent to file a supplemental brief in a pending case, based on a recent decision by a United States court of appeals. We deny the Respondent's motion, but because this issue arises often we have further decided to clarify our current practice.

Hereafter, we will permit parties in unfair labor practice cases and in representation cases to call to the Board's attention pertinent and significant authorities that come to a party's attention after the party's brief has been filed. A party may promptly advise the Executive Secretary by letter, with a copy to all other parties. The letter should set forth the case citations and state the reasons for them, and refer to the pages, paragraphs, and lines of the brief to which the citations apply. The body of the letter must not exceed 350 words. The other parties may file a similarly limited response. That response

must be filed in unfair labor practice cases no later than 14 days, and in representation cases no later than 7 days, after service of the letter, and no extensions will be granted to file the response.

This procedure is modeled after Rule 28(j) of the Federal Rules of Appellate Procedure.¹ By adopting this procedure, we do not suggest that, in appropriate situations, the Board no longer will grant special leave for supplemental briefs. Nor does it in any way affect the Board's discretion to solicit the filing of supplemental briefs, sua sponte, for any reason it deems appropriate.

The Respondent may resubmit its citation of additional authority in conformity with this order. We deny the Respondent's motion to file a supplemental brief. We see no circumstances to warrant "special leave" to file such a brief. See Section 102.46 of the Board's Rules.

¹ Rule 28(j): Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed—or after oral argument but before decision—a party may promptly advise the circuit clerk by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.